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SECRETARIAT OF THE KERALA LEGISLATURE

NOTIFICATION

No. 6952/LA4A/79. *Dated, Trivandrum, 30th September* 1979.

The Kerala Advocates' Welfare Fund Bill, 1979 together with the Statement of Objects and Reasons, the Financial Memorandum and the Memorandum regarding Delegated Legislation is published, under Rule 69 of the Rules of Procedure and Conduct of Business in the Kerala Legislative Assembly.

Dr. R. Prasannan,
Secretary,
Legislative Assembly.

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33/3653/B.

Fifth Kerala Legislative Assembly

Bill No. 131

THE KERALA ADVOCATES' WELFARE FUND BILL, 1979

A

BILL

to provide for the constitution of a welfare fund for the payment of retirement benefits to Advocates in the State of Kerala and for matters connected therewith or incidental thereto.

Preamble.—WHEREAS it is expedient to provide for the constitution of a welfare fund for the payment of retirement benefits to Advocates in the State of Kerala and for matters connected therewith or incidental thereto:

BE it enacted in the Thirtieth Year of the Republic of India as follows:—

1. *Short title, extent and commencement.*—(1) This Act may be called the Kerala Advocates' Welfare Fund Act, 1979.

(2) It extends to the whole of the State of Kerala.

(3) It shall come into force on such date as the Government may, by notification in the Gazette, appoint.

2. *Definitions.*—In this Act, unless the context otherwise requires,—

(a) "advocate" means a person whose name has been entered in the State roll of Advocates prepared and maintained by the Bar Council of Kerala under section 17 of the Advocates' Act, 1961 (Central Act 25 of 1961) and who is a member of a Bar Association;

(b) "Bar Association" means an association of advocates recognised and registered or provisionally recognised, by the Bar Council under section 13;

(c) "Bar Council" means the Bar Council of Kerala, constituted under section 3 of the Advocates' Act, 1961 (Central Act 25 of 1961);

(d) "Cessation of practice" means removal of the name of an Advocate from the State roll maintained by the Bar Council on account of his retirement or death;

(e) "dependents" means wife, husband, father, mother and unmarried minor children or such of them as exist;

(f) "Fund" means the Advocates' Welfare Fund constituted under section 3;

(g) "Member of the Fund" means an advocate admitted to the benefit of the Fund and continuing to be a member thereof under the provisions of this Act;

(h) "prescribed" means prescribed by the Bar Council by rules made under this Act;

(i) "retirement" means stoppage of practice as an advocate communicated to and recorded by the Bar Council;

(j) "stamp" means the stamp printed and distributed under section 22;

(*k*) "State" means the State of Kerala;

(l) "suspension of practice" means voluntary suspension of practice as an advocate or suspension by the Bar Council for misconduct;

(m) "Trustee Committee" means the committee established under section 4;

(n) "vakalath" means vakalathnama, and includes memorandum of appearance or any other document by which an advocate is empowered to appear or plead before any court, tribunal or other authority.

3. *Advocates Welfare Fund.*—(1) The Government shall constitute a fund called the Advocates' Welfare Fund.

(2) There shall be credited to the Fund—

(a) all amounts paid by the Bar Council under section 12;

(b) any other contribution made by the Bar Council;

(c) any voluntary donation or contribution made to the Fund by the Bar Council of India, any Bar Association, any other association or institution, any advocate or any other person;

(d) any grant made by the State Government to the Fund;

(e) the amount set apart from the legal benefit fund constituted under subsection (2) of section 76 of the Kerala Court Fees and Suits Valuation Act 1959 (10 of 1960), for providing social security measures for the legal profession;

(f) any sum borrowed under section 10;

(g) all sums received from the Life Insurance Corporation of India on the death of an Advocate under the Group Insurance Policy;

(h) any profit or dividend received from the Life Insurance Corporation of India in respect of policies of Group Insurance of the members of the fund;

(i) any interest or dividend or other return on any investment made of any part of the fund;

(j) all sums collected by way of sale of stamps under section 22;

(k) all sums collected under section 15 by way of application fees and annual subscriptions and interest thereon;

(3) The sums specified in subsection (2) shall be paid to, or collected by, such agencies, at such intervals and in such manner, and the accounts of the Fund shall be maintained in such manner, as may be prescribed.

4. *Establishment of Trustee Committee.*—(1) The Government may, by notification in the Gazette, establish, with effect from such date as may be specified therein, a committee to be called the Kerala Advocates' Welfare Fund Trustee Committee.

(2) The Trustee Committee shall be a body corporate having perpetual succession and a common seal with power to acquire and hold property and shall, by the said name, sue and be sued.

(3) The Trustee Committee shall consist of—

(a) the Advocate General of Kerala, who shall be the Chairman of the Trustee Committee, *exofficio*;

(b) two members of the Bar Council nominated by it;

(c) the treasurer of the Bar Council, who shall be the treasurer of the Trustee Committee, *exofficio*;

(d) the Secretary of the Bar Council who shall be the Secretary of the Trustee Commitee, *exofficio*;

(4) A member nominated by the Bar Council under clause (b) of sub-section (3) shall hold office for a term of four years or for the duration of his membership in the Bar Council, whichever is less.

5. *Disqualifications and removal of nominated members of Trustee Committee.*—(1) A member nominated by the Bar Council under clause (b) of subsection (3) of section 4 shall be disqualified to be a member of the Trustee Committee if he—

(a) becomes of unsound mind; or

(b) is adjudged insolvent; or

(c) is absent without leave of the Trustee Committee for more than three consecutive meetings of the committee; or

(d) is a defaulter to the Fund or has committed breach of trust; or

(e) is convicted by a criminal court for an offence involving moral turpitude, unless such conviction has been set aside.

(2) The Government may remove any member who is or has become disqualified under sub-section (1) from membership of the Trustee Committee:

Provided that no order removing any member shall be passed unless that member and the Bar Council have been given an opportunity of being heard.

6. *Resignation by nominated members of Trustee Committee and filling up of casual vacancies.*—(1) Any member nominated by the Bar Council under

clause (b) of subsection (3) of section 4 may resign his office by giving three months' notice in writing to the Bar Council and on such resignation being accepted by the Bar Council shall be deemed to have vacated his office:

Provided that the Bar Council shall consult the Government before accepting the resignation.

(2) A casual vacancy in the office of a member referred to in sub-section (1) may be filled up, as soon as may be, by the Bar Council and a member so nominated to fill such vacancy shall hold office for the unexpired portion of the term of office of the member whose place he fills.

7. *Acts of Trustee Committee not to be invalidated by vacancy, defect, etc.*—No act done or proceeding taken under this Act or the rules made thereunder by the Trustee Committee shall be invalidated merely by reason of—

(a) any vacancy or defect in the constitution of the Committee; or

(b) any defect or irregularity in the nomination of any person as a member thereof; or

(c) any defect or irregularity in such act or proceeding not affecting the merits of the case.

8. *Vesting and application of Fund.*—The Fund shall vest in, and be held and applied by, the Trustee Committee subject to the provisions, and for the purposes, of this Act.

9. *Function of Trustee Committee.*—(1) The Trustee Committee shall administer the Fund.

(2) In the administration of the Fund, the Trustee Committee shall, subject to the provisions of this Act and the rules made thereunder—

(a) hold the amounts and assets belonging to the Fund in trust;

(b) receive applications for admission or readmission to the Fund, and dispose of such applications within ninety days from the date of receipt thereof;

(c) receive applications from the members of the Fund, their nominees or legal representatives, as the case may be, for payment out of the Fund, conduct such enquiry as it deems necessary for the disposal of such applications and dispose of the applications within five months from the date of receipt thereof;

(d) record in the minutes books of the Trustee Committee its decisions on the applications;

(e) pay to the applicants amounts at the rates specified in the Schedule;

(f) send such periodical and annual reports as may be prescribed to the Government and the Bar Council;

(g) communicate to the applicants by registered post with acknowledgement due the decision of the Trustee Committee in respect of applications for admission or readmission to the Fund or claims to the benefit of the fund;

(h) do such other acts as are, or may be, required to be done under this Act and the rules made thereunder.

10. *Funds, borrowing and investment.*—(1) The Trustee Committee may, with the prior approval of the Government and the Bar Council, borrow, from time to time, any sum required for carrying out the purposes of this Act.

(2) The Trustee Committee shall deposit all moneys and receipts forming part of the Fund in any scheduled bank or invest the same in loans to any corporation owned or controlled by the Central Government or the State Government or in loans floated by the Central Government or the State Government or in any other manner as the Bar Council may from time to time direct with the prior approval of the Government.

(3) All amounts due and payable under this Act and all expenditure relating to the management and administration of the Fund shall be paid out of the Fund.

(4) The accounts of the Trustee Committee shall be audited annually by a Chartered Accountant appointed by the Bar Council.

(5) The accounts of the Trustee Committee, as certified by the auditor, together with the audit report thereon, shall be forwarded to the Bar Council by the Trustee Committee and the Bar Council may issue such directions as it deems fit to the Trustee Committee in respect thereof.

(6) The Trustee Committee shall comply with the directions issued by the Bar Council under subsection (5).

11. *Powers and duties of Secretary.*—The Secretary of the Trustee Committee shall—

(a) be the Chief Executive Authority of the Trustee Committee and responsible for carrying out its decisions;

(b) represent the Trustee Committee in all suits and proceedings for and against the Committee;

(c) authenticate by his signature all decisions and instructions of the Trustee Committee;

(d) operate the bank accounts of the trustee committee jointly with the Treasurer;

(e) convene meetings of the Trustee Committee and prepare its minutes;

(f) attend the meetings of the Trustee Committee will all the necessary records and information;

(g) maintain such forms, registers and other records as may be prescribed from time to time and do all correspondence relating to the Trustee Committee;

(h) inspect and verify periodically the accounts and registers of the Bar Associations regarding stamps;

(i) prepare an annual statement of business transacted by the Trustee Committee during each financial year; and

(j) do such other acts as may be directed by the Trustee Committee and the Bar Council.

12. *Transfer of certain monies to the fund.*—The Bar Council shall pay to the Fund annually an amount equal to twenty per cent of the enrolment fees realised by it.

13. *Recognition and registration of Bar Association.*—(1) All Associations of advocates known by any name functioning in any court centre may, before a date to be notified by the Bar Council in this behalf apply to the Bar Council in such form as may be prescribed for recognition and registration:

Provided that no association of advocates not registered under the Societies Registration Act, 1860 (Central Act 21 of 1860), as in force in the Malabar district referred to in sub-section (2) of section 5 of the States Reorganisation Act, 1956 (Central Act 37 of 1956), or the Travancore-Cochin Literary, Scientific and Charitable Societies Registration Act, 1955 (12 of 1955), shall be entitled to be recognised and registered with the Bar Council under this section:

Provided further that an existing association not so registered may be provisionally recognised by the Bar Council for such period and subject to such conditions as may be prescribed.

(2) Every application for recognition and registration shall be accompanied by an authenticated copy of the certificate of registration under the Societies Registration Act, 1860 or the Travancore-Cochin Literary, Scientific and Charitable Societies Registration Act, 1955, as the case may be, the rules or bye-laws of the association, names and addresses of the office bearers of the association and an up-to-date list of the members of the association showing the name, address, age, date of enrolment and the ordinary place of practice of each member.

(3) The Bar Council may after such enquiry as it deems necessary recognise the association and issue a certificate of registration in such form as may be prescribed.

(4) The decision of the Bar Council regarding the recognition and registration of the Bar Association shall be final.

14. *Duties of Bar Associations.*—(1) Every Bar Association shall, on or before the 15th April every year intimate to the Bar Council a list of its members as on the 31st March of that year.

(2) Every Bar Association shall intimate to the Bar Council—

(a) any change of the office bearers of the association within fifteen days from such change;

(b) any change in the membership including admissions and readmissions within thirty days of such change;

(c) the death, retirement or voluntary suspension of practice of any of its members within thirty days from the date of occurrence thereof, and

(d) such other matters as may be required by the Bar Council from time to time.

15. *Membership in the Fund.*—(1) Every advocate practising in any court in the State of Kerala and being a member of a Bar Association recognised by the Bar Council may apply to the Trustee Committee for admission as a member of the Fund, in such form as may be prescribed.

(2) On receipt of an application under subsection (1), the Trustee Committee shall make such enquiry as it deems fit and either admit the applicant to the Fund or for reasons to be recorded in writing reject the application.

Provided that no order rejecting an application shall be passed unless the applicant has been given an opportunity of being heard.

(3) Every applicant shall pay an application fee of two hundred rupees in the course of one year in four equal instalments, in such manner as may be prescribed, the first instalment being payable along with the application, to the account of the Trustee Committee.

(4) In the event of rejection of the application, the first instalment of the admission fee paid along with the application shall be refunded to the applicant.

(5) Every member shall pay an annual subscription to the Fund on or before the 30th June of every year at the following rates, namely:—

Where the standing of the Advocate at the Bar is five years or more, but less than fifteen years.	fifty rupees
Where the standing of the Advocate at the Bar is fifteen years or more.	one hundred rupees

(6) A member shall be entitled to pay the subscription under sub-section (5) in two equal half yearly instalments at his option.

(7) Any member who fails to remit the annual subscription for an year before the 30th June of that year shall be liable to be removed from the membership of the Fund.

(8) A person removed from the membership of the Fund under sub-section (7) shall be readmitted to the Fund on payment of the arrears with interest at twelve per cent per annum within six months from the date of removal.

(9) Every member shall, at the time of admission to the membership of the Fund make a nomination conferring on one or more persons the right to receive the amount which may be due to him from the fund in the event of his death before the amount has been paid to him.

(10) If a member nominates more than one person under subsection (9) he shall specify in the nomination the amount or share payable to each of the nominees in such manner as to cover the whole of the amount that may be due to him.

(11) A member may at any time cancel a nomination by sending a notice in writing to the Trustee Committee, provided that a member shall along with such notice send a fresh nomination.

(12) Every member who voluntarily suspends practice or retires shall, within fifteen days of such suspension or retirement, intimate that fact to the Trustee Committee and if any member fails to do so without sufficient reasons the Trustee Committee may reduce, in accordance with such principles as may be prescribed, the amount due to that member.

16. *Payment from the Fund on cessation of practice.*—(1) A member of the Fund shall, on cessation of practice, be entitled to receive from out of the Fund an amount at the rate specified in the Schedule.

(2) In the event of death of a member, the amount shall be paid to his nominee or, where there is no nominee, to his legal heirs.

(3) A member of the Fund may opt retirement benefits at any time after five years of his admission as a member of the Fund, but he shall be eligible for readmission to the Fund as a new member subject to such conditions as may be prescribed:

Provided that a member suffering from permanent disablement shall be allowed to retire within five years of his admission to the Fund.

(4) For calculating the period of completed years of practice for the purpose of payment under this Act, every four years of practice at the Bar, if any, before the admission of a member to the Fund shall be computed as one year of practice and added on to the number of years of practice after such admission.

(5) In the case of a member who dies within five years of his admission to the Fund, his nominee or legal heir, as the case may be, shall be eligible to get an amount at the rate of one thousand rupees per year of practice.

(6) An application for payment from the Fund shall be preferred to the Trustee Committee in such form as may be prescribed.

(7) An application received under subsection (6) shall be disposed of by the Trustee Committee after such enquiry as it deems necessary.

17. *Restriction on alienation, attachment, etc., of interest of member in the Fund.*—(1) The interest of any member in the Fund, for the right of a member or his nominee or legal heirs to receive any amount from the Fund

shall not be assigned, alienated, or charged and shall not be liable to attachment under any decree or order of any court, tribunal or other authority.

(2) No creditor shall be entitled to proceed against the Fund or the interest therein of any member or his nominee or legal heir.

Explanation.—For the purposes of this section, "creditor" includes the State, Official assignee or receiver appointed under the Insolvency Act 1955 (2 of 1956) or any other law for the time being in force.

18. *Group Life Insurance for members and other benefits.*—The Bar Council may, for the welfare of the members of the Fund—

(a) obtain from the Life Insurance Corporation of India Policies of Group Insurance for the members;

(b) provide for medical and educational facilities for the members and their dependents; and

(c) provide for such other benefits as may be prescribed.

19. *Meetings of the Trustee Committee.*—(1) The Trustee Committee shall meet at least once in three calendar months or more often if found necessary to transact business under this Act or the rules made thereunder.

(2) Three members of the Trustee Committee shall form the quorum for a meeting of the Committee.

(3) The Chairman or in his absence, a member elected shall preside over a meeting of the Trustee Committee.

(4) Any matter coming up before a meeting of the Trustee Committee shall be decided by a majority of the members present and voting at the meeting and in the case of an equality of votes, the Chairman or the member presiding over the meeting shall have a casting vote.

20. *Travelling and daily allowance to members of Trustee Committee.*—The non-official members of the Trustee Committee shall be eligible to get such travelling allowance and daily allowance as are admissible to the Members of the Bar Council.

21. *Appeal against decisions of Trustee Committee.*—(1) An appeal against any decision of the Trustee Committee shall lie to the Bar Council.

(2) The appeal shall be in the prescribed form and shall be accompanied by—

(a) the order appealed against; and

(b) a receipt evidencing payment of one hundred rupees to the credit of the Bar Council in any of the branches in Kerala of the State Bank of India.

(3) The appeal shall be filed within thirty days from the date of receipt of the order appealed against.

(4) The decision of the Bar Council on the appeal shall be final.

22. *Printing and distribution of stamps by Bar Council.*—(1) The Bar Council shall cause to be printed and distributed welfare fund stamps of the value of two rupees with the Bar Council Emblem and its value inscribed thereon.

(2) The stamps shall be of the size 1" × 2" and sold only to members of the Fund.

(3) The custody of the stamps shall be with the Bar Council.

(4) The Bar Council shall control the distribution and sale of the stamps through Bar Associations.

(5) The Bar Council and the Bar Associations shall keep proper accounts of the stamps in such form and in such manner as may be prescribed.

(6) The Bar Associations shall purchase the stamps from the Bar Council after paying the value thereof less ten per cent thereof towards incidental expenses.

(7) Every stamp affixed on vakalaths filed before any court, tribunal or other authority shall be cancelled in the manner provided in the Kerala Court Fees and Suits Valuation Act, 1959 (10 of 1960).

23. *Vakalath to bear stamps.*—(1) Every member of the Fund shall affix one stamp on every vakalath filed by him and no vakalath shall be filed before or received by any court, tribunal or other authority unless it is so stamped.

(2) The value of the stamp shall neither be costs in the case nor be collected in any event from the client.

(3) Any contravention of the provisions of subsection (2) by any member shall disentitle him to the benefits of the Fund and the Trustee Committee shall report such instances to the Bar Council for appropriate action.

24. *Protection of action taken in good faith.*—(1) No suit, prosecution or other legal proceedings shall lie against any person for anything which is in good faith done or intended to be done in pursuance of this Act or any rule made thereunder.

(2) No suit or other legal proceeding shall lie against the Trustee Committee or the Bar Council for any damage caused or likely to be caused by anything which is in good faith done or intended to be done in pursuance of this Act or any rule made thereunder.

25. *Bar of jurisdiction of civil courts.*—No civil court shall have jurisdiction to settle, decide or deal with any question or to determine any matter which is by or under this Act required to be settled, decided or dealt with or to be determined by the Trustee Committee or the Bar Council.

26. *Power to summon witnesses and take evidence.*—The Trustee Committee and the Bar Council shall, for the purposes of any inquiry under this Act, have the same powers as are vested in a civil court while trying a suit under the Code of Civil Procedure, 1908, in respect of the following matters, namely:—

(a) enforcing the attendance of any person or examining him on oath;

(b) requiring the discovery and production of documents;

(c) receiving evidence on affidavit;

(d) issuing commissions for the examination of witnesses.

27. *Power to make rules.*—The Bar Council may, with the previous approval of the Government, by notification in the Gazette make rules for the purpose of carrying into effect the provisions of this Act.

SCHEDULE

(*See* sections 9 and 16)

30	years' standing	..	Rs. 30,000
29	"	..	Rs. 29,000
28	"	..	Rs. 28,000
27	"	..	Rs. 27,000
26	"	..	Rs. 26,000
25	"	..	Rs. 25,000
24	"	..	Rs. 24,000
23	"	..	Rs. 23,000
22	"	..	Rs. 22,000
21	"	.	Rs. 21,000
20	"	.	Rs. 20,000
19	"	.	Rs. 19,000
18	"	..	Rs. 18,000
17	"	..	Rs. 17,000
16	"	..	Rs. 16,000
15	"		Rs. 15,000
14	"	..	Rs. 14,000
13	"	..	Rs. 13,000
12	"	..	Rs. 12,000
11	"	..	Rs. 11,000
10	"	..	Rs. 10,000
9	"	..	Rs. 9,000
8	"	..	Rs. 8,000
7	"	..	Rs. 7,000
6	.	..	Rs. 6,000
5	"	..	Rs. 5,000

STATEMENT OF OBJECTS AND REASONS

The advocates of the State of Kerala have been continuously demanding for the formulation of some welfare schemes for them. In the budget speech for the financial year 1976-77, the then Minister for Finance announced that it was proposed to set up an Advocates' Welfare Fund and that the administration of the Fund would be entrusted to the Bar Council. In the budget speech for the financial year 1978-79, the then Minister for Finance announced that Government had decided to institute a provident fund scheme for advocates and that a provision of Rs. 5 lakhs had been made for the purpose. Accordingly, it is proposed to enact a legislation for the purpose of constituting a welfare fund for the benefit of the advocates in the State.

2. Section 76 of the Kerala Court Fees and Suits Valuation Act, 1959, provides for the constitution of a legal benefit fund for the purpose of providing an efficient legal service for the people of the State and social security measures for the legal profession. It is proposed to utilise the portion of the legal benefit fund set apart for providing social security measures for the legal profession for the purpose of conferring benefits under the proposed legislation.

3. The Bill is intended to achieve the above objects.

FINANCIAL MEMORANDUM

Sub-clause (2) (d) of clause 3 of the Bill contemplates the making of grants by the Government to the Advocates' Welfare Fund. The amount of grant that will have to be made by the Government cannot be estimated at present.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Sub-clause (3) of clause 1 of the Bill seeks to empower the Government to bring the Act into force on a date to be notified by the Government. Sub-clause (3) of clause 3 of the Bill provides for prescribing the agencies to whom, the intervals at which and the manner in which the sums to be credited to the fund shall be paid or collected and the manner in which the accounts of the fund shall be maintained. Clause 4 seeks to empower the Government to establish by notification in the Gazette a Committee to be called the Kerala Advocates' Welfare Fund Trustee Committee. Sub-clause (2) (f) of clause 9 provides for prescribing the periodical and annual reports which the Trustee Committee shall send to the Government and to the Bar Council. Sub-clause (g) of clause 11 provides for prescribing the forms, registers and other records which the Secretary of the Trustee Committee shall maintain. Sub-clause (1) of clause 13 seeks to prescribe the form in which associations of Advocates functioning in any court centre may apply for recognition and registration before a date to be notified by the Bar

Council. The second proviso to the said sub-clause seeks to empower the Bar Council to prescribe the period within which and the conditions subject to which an existing association not registered may be provisionally recognised. Sub-clause (3) of clause 13 seeks to prescribe the form in which certificate of registration may be given to an association when recognised. Sub-clause (1) of clause 15 seeks to prescribe the form in which an advocate who is a member of a Bar Association recognised by the Bar Council may apply to the Trustee Committee for admission as a member of the Fund. Sub-clause (3) of clause 15 seeks to prescribe the manner of payment of application fee by an applicanr. Sub-elause (12) of that clause provides for prescribing the principles in accordance with which the amount due to a member for failure to intimate the Trustee Committee the fact of voluntary suspension of practice or retirement within fifteen days of suspension or retirement may be reduced. Sub-clause (3) of clause 16 provides for prescribing the conditions subject to which a member who has opted for retirement benefits shall be eligible for readmission to the Fund as a new member. Sub-clause (6) of that clause provides for prescribing the form in which application for payment from the Fund shall be preferred.

2. Sub-clause (c) of clause 18 provides for prescribing the benefits in addition to those specified, for the welfare of the members of the Fund. Sub-clause (2) of clause 21 provides for prescribing the form in which an appeal to the Bar Council shall be preferred. Sub-clause (5) of clause 22 provides for prescribing the form and the manner in which accounts of stamps shall be kept by the Bar Council and the Bar Associations. Clause 27 seeks to empower the Bar Council to make rules with the previous approval of the Government for carrying into effect the provisions of the Act.

3. The matters in respect of which notifications may be issued or rules may be made are of a routine or administrative nature on matters of detail. The delegation of legislative power is, thus, of a normal character.

M.K. RAGHAVAN.

33/3653/B.